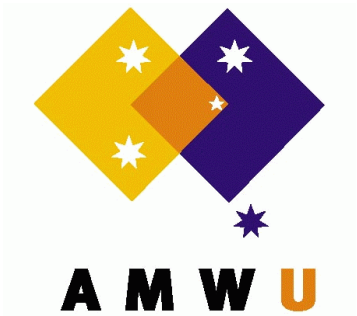
AUSTRALIAN MANUFACTURING WORKERS' UNION



SUBMISSION TO INQUIRY INTO THE WORKPLACE RELATIONS (RESTORING FAMILY WORK BALANCE) AMENDMENT BILL 2007

SENATE STANDING COMMITTEE ON EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION

JUNE 2007

Introduction

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make submissions to the inquiry of the Senate Employment, Workplace Relations and Education References Committee (the Committee) into the Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007 (the Bill).

2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU represents approximately 130,000 workers in a broad range of sectors and occupations within Australia's manufacturing industry.

3. The AMWU supports the submissions to this inquiry of the Australian Council of Trade Unions (ACTU). In addition, the AMWU seeks to make additional submissions regarding a number of aspects of the Bill.

4. The AMWU supports the broad intention of the Bill in so far as it attempts to bring some measure of fairness to Australia's industrial relations laws. The AMWU agrees that there is an urgent need for Australian workers to be better able to find a balance between their family and paid work responsibilities.

5. The AMWU submits however, that the provisions in the Bill suffer from a number of drafting deficiencies and are, moreover, not sufficient in their scope to make the types of major changes to the industrial laws that are necessary to bring about lasting and sustainable improvements to the family / paid work balance.

6. The amendments made to the *Workplace Relations Act 1996* by the unpopular and unfair "Work Choices" legislation cannot be put right by a handful of minor changes to the thousands of pages of legislation and regulations that now govern Australian employers and employees. For fairness to be put back into Australian workplaces, the whole industrial relations system needs to be overhauled. Obviously, this process will be a major task, however, attempting minor changes

at the margins, no matter how well intentioned, will not fix the unfairness that lies at the heart of the Government's Work Choices legislation.

7. Notwithstanding the AMWU's reservations about the approach adopted in the Bill, the Bill's introduction is nevertheless a welcome initiative on behalf of Senator Fielding. Moreover, despite some of the Bill's technical failings and substantive omissions, which are in part identified later in this submission, there is no doubt that many elements of the Bill should be taken up in some form if Australian workers are to achieve a better family / paid work balance.

A meal break after five hours of continuous work

8. The AMWU supports the broad principle that workers should not have to work more than 5 hours without a meal break. However, the AMWU has some technical concerns about the approach of the Bill.

9. The proposed sentence to be added to s.607 is awkward on its face and, if it were to be adopted in principle, needs to be more carefully drafted. The wording provides: "This section must not be modified or excluded from an employee's workplace agreement". Technically, it is clearly not the section itself which might potentially be excluded from an employee's agreement, rather it is *the right* contained within the section that is at risk of exclusion.

10. The proposed repeal of s.608(b) would not guarantee that workplace agreements could not override the requirement for a meal break while ever the Act would allow the regulations to provide for the same result through s.608(c).

11. Moreover, the proposals leave disputes over the right to a meal break to be subject to the model dispute resolution procedure. This procedure is manifestly inadequate. The procedure is inordinately lengthy and time consuming and does not give the Australian Industrial Relations Commission the power to compel attendance, make an order, arbitrate or otherwise finally resolve a matter. The only other alternative for a dispute to be resolved would be through costly legal proceedings.

12. The AMWU would support better drafted provisions which provide greater protections for entitlements to meal breaks however, if fairness is to be brought to the employment relationship, and a genuinely workable family / paid work balance is to be achieve, such an amendment is only one aspect of what must be larger and more comprehensive changes to the current laws.

Remuneration of not less than a rate of time and one half for working more time than the maximum ordinary hours of work

13. The AMWU supports the concept of guaranteed higher rates of pay for employees working longer than ordinary hours of work.

14. However, the AMWU is concerned that the wording of the Bill suffers from technical difficulties. Further, any guaranteed rates in legislation are likely to need to be part of more comprehensive changes to the Act or part of a new Act following the election of a new government.

15. The proposed s.226(4A) suffers from drafting problems and would not appear to make sense in so far as it purports to create obligations "for the purposes" of s.226(1)(b). Alternate drafting is required. Further, the obligation's exact relationship to awards is not clear without further refinement of the wording.

16. Notably, the Bill also fails to address the uncertainty surrounding what are "reasonable additional hours", and the capacity for that concept to be abused, nor the capacity of the averaging period contained in s.226(1)(a)(ii) to be misused.

The preservation of existing redundancy entitlements

17. The preservation of redundancy entitlements under the *Workplace Relations Act 1996* is currently inadequate. The treatment of the workers at Tristar Steering and Suspension Australia Ltd (Tristar) shows that despite the belated attempts by the government to put a bandaid on the political sore that the Tristar dispute had become, by amending the Act to preserve redundancy entitlements for 12 months pursuant to the misleadingly named *Workplace Relations Legislation*

Amendment (Independent Contractors) Act 2006, the law remains open to exploitation. Long serving workers at Tristar continue to be kept on the company's books in the absence of any genuine business activity at Tristar so that redundancy entitlements can be avoided.[1]

18. The AMWU strongly agrees that redundancy entitlements should be better protected and Senator Fielding must be commended for seeking a solution to the unfair manner in which redundancy entitlements are currently dealt with under the *Workplace Relations Act 1996*.

19. The AMWU does not however, believe that the amendments contained in the Bill provide adequate protection for redundancy entitlements.

20. Fundamentally, redundancy provisions cannot be protected while ever employers are free to terminate employees for reasons that are essentially arbitrary. With a significant proportion of employees subject to termination at any time for reasons that may be harsh, unjust and unreasonable, it is all too easy for unscrupulous employers to manufacture reasons for termination that take employees out of the definition of redundancy in industrial instruments. In this context it is relevant to note that Tristar has purported to terminate Mr Martin Peek, a union delegate employed by Tristar, for his comments to the media about working at Tristar. If Mr Peek is terminated, Tristar will have successfully avoided paying $190,000 in redundancy.

21. The AMWU further submits that whilst, considered alone, the increase in "preservation period" has some merit, this would be a solitary protection for employees otherwise at the mercy of an Act which serves the interests and whim of employers. In an Act which allows the unilateral termination of an agreement by an employer alone (or by the AIRC, for a pre-reform agreement), without reference to the economic impact on employees covered by the agreement, the

[1] As to the availability of work at Tristar see: *Inquiry into matters relating to the availability of work at Tristar Steering and Suspension Australia Ltd, Re [2007] NSWIR Comm 50; Tristar Steering and Suspension Australia Ltd v. Industrial Relations Commission of NSW [2007] FCA 348 (9 March 2007); Tristar Steering and Suspension Australia Limited v. Industrial Relations Commission of New South Wales [2007] FCA 407 (21 March 2007); Tristar Steering and Suspension Limited v. Industrial Relations Commission of New South Wales [2007] FCAFC 50.*

sole protection of redundancy is an anomaly. In addition, when the preservation of redundancy entitlements is not achieved when the agreement is not "terminated" under the Act, but merely ceases to operate because of the effect of a replacement workplace agreement (including a new AWA), even if that new agreement cuts previous redundancy entitlements. Changing the 12 month preservation period to five years maintains the anomalies, weaknesses and basic unfairness of the current Act. The broader issue of loss of employee entitlements also needs to be addressed as part of a consideration of the treatment of redundancy provisions.

22. The AMWU further notes the position of workers currently employed under "notional agreements preserving state awards" (NAPSAs). These employees were formerly employed on a State Award. NAPSAs will expire three years from the commencement of the Work Choices legislation (see Schedule 8 clause 38A of the *Workplace Relations Act 1996*) in March 2009. Unless employees are bound by another instrument, redundancy entitlements under the NAPSAs will be lost regardless of the Bill.

23. In addition, the AMWU notes that in the yet to be commenced award rationalisation process, redundancy pay is not a "preserved entitlement". This would appear to mean that where there is any variation in redundancy pay between awards, redundancy entitlements are likely to be varied and/or lost. Again, the Bill because of its limited scope, does not, and cannot, deal with this issue.

24. Another notable feature of the Bill is that it fails to reinstate award redundancy provisions for employees employed with an employer who employs less than 15 employees. These rights were taken away in the Work Choices amendments. Where such employees are unable to come to a redundancy agreement with their employer, these employees will continue to have no right to redundancy pay.

25. In terms of the technical aspects of the proposal, the AMWU also submits that while the proposed insertion of section 10A may, or may not, be effective in

extending the preservation period within the current scheme of the Act from 12 months to 5 years, it is generally undesirable and likely to lead to confusion if other parts of the Act continue to provide, on their face, for a 12 months preservation period.

A clear definition of ordinary hours of work

26. It is one of the peculiar anomalies of the thousands of pages of the current industrial relations laws that while Division 3 of Part 7 of the Workplace Relations Act 1996 is entitled "Maximum Ordinary Hours of Work" and Subdivision B of Division 3 is entitled "Guarantee of maximum ordinary hours of work", the Act itself has no clear definition of ordinary hours of work.

27. In such circumstances, Senator Fielding is again to be commended for attempting to introduce such a definition. Unfortunately the Bill does not appear to contain a satisfactorily expressed definition.

28. In this respect, the proposed amendment to s.226 would appear to be flawed. The proposed amendment includes the insertion of a new s.226(1AA) as follows:

> (1AA) For the purpose of the guarantee and for this Act, ***ordinary hours*** means, in addition to the meaning in paragraph (1)(a), hours of work between 6am and midnight.

29. However, paragraph 1(a) does not expressly define ordinary hours. To the extent that there is an implied definition in paragraph 1(a), if a related obligation is to be added to the obligations already in paragraph 1(a) – it would be more appropriate if a plainly expressed and comprehensive definition could be drafted.

30. We further note that it is unclear how the proposed (1AA), relates to other parts of the Act where the term "ordinary hours" is used. For example, the definition of "regular part-time employee" in s.4, and the required amount of compensation in lieu of notice where there has been a termination pursuant to

s.661(5). The use of "ordinary hours" in these parts of the Act does not appear consistent with the new definition in so far as the use of "ordinary hours" in s.4 and s.661(5). On their face, these provisions appear to deal with quantum, rather than the time of day in which the hours are worked.

A paid full day off in lieu of a public holiday

31. The current provisions of the *Workplace Relations Act 1996* do not adequately protect public holidays. The AMWU supports amendments that would ensure that the current situation is not continued. Employees should not be able to be required to work public holidays for no additional pay. Where employees do work on a public holiday, it is reasonable to expect that they should be paid at a higher rate and given a day off in lieu.

32. The AMWU wishes to express disappointment that Senator Fielding did not seek to amend the *Workplace Relations Act 1996* to return to workers the public holidays lost as a result of the government restricting public holidays. Under the Work Choices legislation, workers entitled to an award union picnic day holiday (whether or not members of a union) lost a public holiday. Similarly Work Choices removed other public holidays that were observed on an industry, rather than a geographical basis. These long standing public holidays were formerly days that employees could spend with their families. Such public holidays should not have been arbitrarily removed and should be reinstated.

Conclusion

33. Senator Fielding's introduction of the Bill is clearly consistent with the principled position he took in earlier rejecting the Government's unfair Work Choices legislation and represents what is plainly a genuinely held commitment to improve the family / paid work balance for Australian employees.

34. The AMWU strongly supports making Australia's industrial laws more family friendly. The principles underpinning the objects of the Bill are laudable and worthy of support. However, in its present form the Bill is fraught with a number of technical deficiencies that may frustrate the objects of the Bill. Further the Bill does not go far enough in its suggested amendments. The *Workplace Relations Act 1996* will not find an appropriate balance for employees' family and paid work responsibilities without extensive and fundamental change. Unfortunately, in its present form, the passing of this Bill would not bring about such a change.